

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

V

Merrimack Chamber of Commerce

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid severance pay, vacation pay, unpaid
employee expenses
RSA 275:48 II lost benefits

Employer: Merrimack Chamber of Commerce, PO Box 254, Merrimack NH 03054

Date of Hearing: November 5, 2015

Case No.: 51277

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of her wage claim, that she was owed a total of \$6,528.94 in unpaid wages; \$3,400 in unpaid severance pay, \$1,020.00 in unpaid vacation pay, \$56.42 in unpaid employee expenses, and \$1,324.41 for a lost medical benefit.

She amended the claim to \$2,400.83 in unpaid wages; \$1,020.00 in unpaid vacation pay, \$56.42 in unpaid employee expenses and \$1,324.41 for the lost medical benefit.

The employer, through the filing of their written objection, stated they had no documentation for the employee expenses or the lost medical benefit. They further argued the claimant used all of the vacation time which had accrued to her benefit upon her termination.

At the hearing, the employer agreed to pay the \$56.42 for unpaid employee expenses and \$1,324.41 for the medical benefit. They continued to object to the vacation pay.

FINDINGS OF FACT

The claimant worked for the employer as the Executive Director from April 1, 2009 through her termination on July 27, 2015.

The employer agreed to pay the \$56.42 for unpaid employee expenses and \$1,324.41 for the medical benefit. The Hearing Officer finds these amounts due and owing.

The claimant argues she is due six days of vacation pay, or \$1,020.00. She received fifteen vacation days per year. As she only used nine days, she seeks the balance as due.

RSA 275:49 III requires that the employer make available to employees in writing, or through a posted notice maintained in an accessible place, employment practices and policies regarding vacation pay. Lab 803.03 (b) requires employers to provide his/her employees with a written or posted detailed description of employment practices and policies as they pertain to paid vacations, holidays, sick leave, bonuses, severance pay, personal days, payment of the employees expenses, pension and all other fringe benefits per RSA 275: 49. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The employer properly notified the claimant of the policy regarding vacation pay in the February 11, 2014, employment contract, which the claimant signed.

The policy reads, in relevant part, "The Employee shall be entitled each year to a vacation of fifteen working days, during which time her compensation shall be paid in full." "In the event that the Employee does not take vacation days during a given 12 month period, the unused vacation days shall not carry forward to a succeeding year, and will be lost. In the event of termination with or without cause during any calendar year, Employee shall be paid for all of her unused vacation days, which have accrued through termination the date."

The parties agree the claimant had fifteen days for 2015 and had used nine of those days.

The claimant disagrees with the accrual schedule because it was not spelled out in the notice.

The employer determined the accrued vacation pay by calculating the days worked in 2015, or 208 days, which is 57% of one year, or 365 days. They used 57% of the fifteen vacation days which equals 8.55 days. They argue she used more days than she had accrued.

Though the claimant is correct that the policy does not provide an accrual schedule for the vacation days, she admits the policy does state the vacation days are paid out based upon the accrual for the year.

The employer used a very broad calculation based on the number of days the claimant had been employed for the year 2015, which is most favorable to the claimant.

The Hearing Officer finds the employer properly notice the claimant that she would be paid for all of her unused vacation days, which have accrued through termination the date.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence she is due the claimed vacation pay under the written policy of the employer.

DISCUSSION

The February 11, 2014, employment contract signed by both parties contained an arbitration clause, which would pre-empt this Department from having jurisdiction in the case.

However, the employer agreed they were satisfied with this process and would not seek arbitration due to the cost. The claimant stated she was not aware of the arbitration clause in the contract.

Therefore, this Department retains jurisdiction for this matter.

DECISION AND ORDER

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as RSA 275:43 V considers the payment of employee expenses to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant proved by a preponderance of the evidence that she was not paid all employee expenses due for mileage, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$56.42.

As RSA 275:43 V considers the payment of employee expenses to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant proved by a preponderance of the evidence that she was not paid all employee expenses due for medical benefit, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$1,324.41.

As RSA 275:43 V considers vacation pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that she is due any vacation pay, it is hereby ruled that this portion of the Wage Claim is invalid.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$1,380.83, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: November 19, 2015

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